

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

EARL OF SANDWICH (USA), LLC,

Plaintiff,

v.

EARL OF DETROIT, LLC, and
SAMUEL BRUCE HORSTE,

Defendants.

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Civil Action No. 09-10517

STIPULATION AND ORDER

The parties stipulate and advise the Court of the following:

1. Plaintiff Earl of Sandwich (USA), LLC (“EOS”) is the franchisor of the EARL OF SANDWICH franchise system and has the exclusive right to use and to license others to use the federally-registered service mark EARL OF SANDWICH and related marks (“the EOS Marks”) in connection with the operation of quick service restaurants. In addition to using the EOS Marks, franchised EARL OF SANDWICH restaurants are operated in association with EOS’s distinctive trade dress and in accordance with detailed standards, specifications and methods relating to the operation of a quick-service food restaurant (the “EOS System”). The standards, specifications and methods of the EOS System are set forth in EOS’s confidential and proprietary operations manual, a copy of which is provided to all EOS franchisees (the “Manual”).

2. On September 12, 2007, EOS and Defendant Earl of Detroit, LLC (“Franchisee”) entered into a Franchise Agreement and Addendum (the “Franchise Agreement”) governing

Franchisee's operation of an EARL OF SANDWICH restaurant at 307 South State Street, Ann Arbor, Michigan (the "Restaurant"). Defendant Samuel Bruce Horste ("Horste"), the owner of 35% of Franchisee and the Franchisee's designated Operating Principal executed a guarantee of all of Franchisee's obligations under the Franchise Agreement.

3. Franchisee has failed to comply with certain of its obligations under the Franchise Agreement, including operating the Restaurant in compliance with the Franchise Agreement and Manual and paying amounts owed to EOS under the Franchise Agreement.

4. EOS provided Franchisee with written notice of its defaults under the Franchise Agreement and an opportunity to cure those defaults as required by the Franchise Agreement and pursuant to MCL § 445.1527(c). Franchisee failed to cure its defaults within the time allotted or at any time thereafter.

5. On February 3, 2009, EOS terminated the Franchise Agreement by sending Franchisee a written Notice of Termination. The Notice of Termination cited Franchisee's failure of to cure its prior noticed defaults as grounds for the termination. Defendants do not contest that EOS validly terminated the Franchise Agreement under governing law.

6. Effective immediately and for a period of thirty (30) days after entry by the Court of this Stipulated Order, Defendants Earl of Detroit, LLC and Samuel Bruce Horste, and all persons in active concert or participation with them, including, without limitation, their owners, officers, members, parents, subsidiaries, affiliates, agents, servants, employees, and attorneys, agree to:

- A. Cease and refrain from using the EOS Marks or the EOS System, in any manner whatsoever, including, without limitation, in connection with the advertising, promotion or sale of any product or service, and including, without limitation, all signs, furniture, fixtures, equipment, advertising materials, stationary, forms, telephone directory listings, and any other articles that display the EOS Marks;

- B. Cease and refrain from operating any business under the name EARL OF SANDWICH or operating or doing business under any name or mark, or in any manner that is likely to give the public the impression that any business in which the Defendants have any interest or connection is licensed by EOS or otherwise associated with the EARL OF SANDWICH franchise system;
- C. Make any changes and alterations to their formerly-licensed premises required to de-identify the business;
- D. Turn over to EOS the following materials: the EARL OF SANDWICH Operations Manual, the EARL OF SANDWICH Marketing Manual, and all items bearing the EOS Marks, including but not limited to cups, bags, napkins, marketing materials, business cards, uniforms, stickers, and menu boards; and
- E. Refrain from committing any other act that infringes the EOS Marks or otherwise unfairly competes with EOS or the EARL OF SANDWICH franchise system.

7. Within ten (10) calendar days of entry by the Court of this Stipulated Order, Defendant Earl of Detroit, LLC will file with the Court and serve on counsel for EOS a written report setting forth in detail, under oath, the manner and form in which it has complied with Paragraph 6 of this Stipulation.

8. Defendants' Answer or other response to the Complaint in this action shall be due forty-five (45) days after entry by the Court of this Stipulated Order, unless such time is to respond is further extended by stipulation of the parties and order of the Court.

SO ORDERED.

Date: February 23, 2009

s/John Corbett O'Meara
United States District Judge

s/James C. Rubinger

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February 23, 2009

s/ with consent of Jonathan P. Gerisch

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2009, I electronically filed the foregoing Stipulation and Order with the Clerk of the Court using the ECF system and I hereby certify that I served a copy of the foregoing paper by email on the following:

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Attorneys for Defendants

I further certify that I served a copy of the foregoing paper by first class mail on the following non-ECF participants:

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Defendant

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s/James C. Rubinger
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